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IN THE SUPREME COURT OF THE STATE OF IDAHO

ERIC SCOTT SPOKAS,)	
)	
Plaintiff-Appellant,)	NO. 44851
)	
v.)	ADA COUNTY
)	NO. CV01-16-18072
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE PATRICK H. OWEN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Eric Scott Spokas appeals from the district court's judgment dismissing with prejudice his *pro se* petition for post-conviction relief, challenging the district court's denial of his motion for appointment of counsel.

Statement of Facts and Course of Proceedings

Mr. Spokas included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See* Appellant's Br., pp.1-2.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Spokas' motion for appointment of counsel?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Spokas' Motion For Appointment Of Counsel

The State argues the district court did not abuse its discretion in denying Mr. Spokas' motion for appointment of counsel because it concluded he could not meet the higher standard of avoiding summary dismissal on the merits of his petition. (Respondent's Br., pp.8-11.) The State is incorrect. The Idaho Supreme Court has made it clear that the "decision to appoint counsel and the decision on the merits of the petition if counsel is appointed are controlled by two different standards." *Swader v. State*, 143 Idaho 651, 655 (2007). A petitioner who files a motion for appointment of counsel need not show he has a right to relief; instead, he must "allege[] facts showing the possibility of a valid claim." *Shackleford v. State*, 160 Idaho 317, 325 (2016) (quotation marks omitted). Here, the district court abused its discretion in failing to apply the proper legal test to Mr. Spokas' motion for appointment of counsel, and its decision must be reversed. *See Smith v. Mitton*, 140 Idaho 893, 902 (2004) (stating a district court abuses its discretion when, among other things, it does not act "consistently with the legal standards applicable to the specific choices available to it").

The State relies on *Bjorklund v. State*, 130 Idaho 373 (Ct. App. 1997), for the proposition that Mr. Spokas failed to establish even the possibility of a valid claim of ineffective assistance of counsel because he pled guilty, and cannot challenge his counsel's trial preparation in a post-conviction proceeding. (Respondent's Br., p.8.) Critically, the petitioner in *Bjorkland* did not file a motion for appointment of counsel, and the district court thus analyzed whether his claims met the higher standard necessary to avoid summary dismissal on the merits.¹ *See Bjorkland*,

¹ In addition, the *Bjorkland* Court recognized a petitioner's guilty plea might be involuntary if it was entered upon the advice of counsel that was not within the range of competence demanded

130 Idaho at 375; *see also Judd v. State*, 148 Idaho 22, 24 (Ct. App. 2009) (stating the “threshold showing that is necessary in order to gain appointment of counsel [is] considerably lower than that which is necessary to avoid summary dismissal of a petition”). Where all of a *pro se* petitioner’s claims are procedurally barred, the district court may properly deny the petitioner’s motion for appointment of counsel for failure to raise the possibility of a valid claim. *See, e.g., Shackelford*, 160 Idaho at 326 (concluding petitioner failed to raise the possibility of a valid claim because all of his claims were procedurally barred). But a district court may not deny a motion for appointment of counsel simply because the claims raised in a *pro se* petition may not be sufficient to survive summary dismissal.

The State also contends the district court did not abuse its discretion in denying Mr. Spokas’ motion for appointment of counsel because Mr. Spokas failed to support his claims with any admissible facts or evidence. (Respondent’s Br., p.8.) The State cites *State v. Payne*, 146 Idaho 548 (2008), for the proposition that “courts are not ‘required to accept either the applicant’s mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law.’” (Respondent’s Br., p.7, quoting *Payne*, 146 Idaho at 561.) This quotation is misleading. This language was used in *Payne* with respect to the standard for evaluating the merits of a post-conviction petition, not the standard for evaluating a motion for appointment of counsel. *See Payne*, 146 Idaho at 561. A different, lesser, standard applies to the evaluation of a motion for appointment of counsel. *See Judd*, 148 Idaho at 24. As the Court explained in *Swader*, “[A] *pro se* petitioner may be unable to present sufficient facts showing that his or her counsel’s performance was deficient or that such deficiency prejudiced the defense.” 143 Idaho

of attorneys in criminal cases. *See Bjorkland*, 130 Idaho at 376. That is a claim Mr. Spokas could certainly have included in an amended petition had his motion for appointment of counsel been granted.

at 654-55. But that is a reason for granting a motion for appointment of counsel, not denying it. *See id.*

Despite being unrepresented by counsel, Mr. Spokas *did* include additional facts supporting his claim in his response to the district court's notice of intent to dismiss. (*See* R., pp.27-30). The State discounts these facts in a footnote for lack of verification. (Respondent's Br., p.9, note 1.) But the lack of verification stems from the fact Mr. Spokas was proceeding *pro se*, and the facts he alleged should not be so easily dismissed. Mr. Spokas also argued in his response to the district court's notice of intent to dismiss that he needed "[a]dditional time and effective legal representation . . . to facilitate the production of the required affidavits of witnesses by whom such newly discovered evidence is to be given." (R., p.30.) This is precisely what the Court was concerned with in *Swader*, and is the reason a district court must apply a lower standard when evaluating a motion for appointment of counsel as compared to the merits of a petition.

In *Charboneau v. State*, the Idaho Supreme Court held the district court abused its discretion "[b]y not specifically addressing the appointment of counsel issue before dealing with the substantive issues of [the petition]." 140 Idaho 789, 793 (2004). The Court explained: "At a minimum, the trial court must carefully consider the request for counsel, before reaching a decision on the substantive merits of the petition and whether it contains new and admissible evidence." *Id.* at 794. Here, the district court did not carefully consider Mr. Spokas' motion for appointment of counsel before reaching a decision on the merits of his petition. Instead, in its notice of intent to dismiss, the district court denied Mr. Spokas' motion for appointment of counsel without any analysis or explanation. (R., p.19.) The district court then summarily dismissed Mr. Spokas' petition without responding to his arguments with respect to his motion

for appointment of counsel. (R., pp.31-38.) This was a legal error, which makes the district court's decision an abuse of discretion. As in *Charboneau*, this Court must vacate the district court's judgment dismissing Mr. Spokas' petition for post-conviction relief, and remand this case to the district court with instructions to consider—and ultimately grant—Mr. Spokas' motion for appointment of counsel. 140 Idaho at 794.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, Mr. Spokas respectfully requests that this Court vacate the district court's judgment dismissing with prejudice his petition for post-conviction relief, and remand this case to the district court with instructions to grant his motion for appointment of counsel.

DATED this 15th day of November, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of November, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

PATRICK H OWEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas